**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION.**
FIRST APPEAL NO.788 OF 1997
A/w
Civil Application No.5031 of 1997

Smt. Girja A Rao and ors. .. Appellants.
Vs
The Municipal Corporation of
Gr.Bombay.. .. Respondents.

Mr N.D.Rao, for the appellants.
Mr J.J.Xaiver, for the respondents.

**CORAM : D.B.BHOSALE,J.**
**DATE : 06.12.2006**

**PC:**

1. Heard the learned counsel for the parties.

2. Mr.Rao, learned counsel for the appellants, submits that he has instructions not to press this appeal on merits and the appellants will be satisfied if they are allowed to make proposal for construction of upper floor on the existing structure since, according to them, the FSI is available for such construction. He further submitted that the Corporation may be directed to consider their proposal within timeframe and if such directions are given, the appellants are prepared to remove the disputed structure admeasuring 76' x 13.1/2' behind the restaurant, as described in the schedule of the notice under section 351 dated 15.7.1985 of the Mumbai Municipal Corporation Act (for short, "the Act"). Mr.Xaiver, learned counsel for the respondent-Corporation, has no objection for granting liberty as prayed for. In the circumstances, I pass the

following order.

(a) The appellants shall remove the disputed structure admeasuring 76′ x 13.1/2′, for which the notice under section 351 of the Act was issued by the Corporation on 15.7.1985 within a period of five weeks from today. If the appellants fail to remove the aforesaid structure within a period of five weeks, as aforestated, it shall be open for the respondent-Corporation to proceed with the action of demolition pursuant to the notice under section 351 dated 15.7.1985. Immediately after the removal of the aforesaid unauthorised structure, it will be open for the appellants to make a fresh proposal for utilising balance FSI by constructing the upper floor on the existing structure within a period of four weeks therefrom. If such a proposal is made, the Executive Engineer, Building Proposal, Eastern Suburbs, Pant Nagar, shall consider the same on merits in accordance with law within a period of eight weeks from the receipt of the proposal and communicate order to the appellants within a period of two weeks therefrom.

(b) In view of this order, nothing further survives in this Appeal and the Appeal stands disposed of. As a consequence thereof, the civil application also stands disposed of.

(D.B.BHOSALE,J.)